

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

September 20, 1995

ALL COUNTY LETTER NO. 95-55

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: REGULATIONS ESTABLISHING A PRIORITY ORDER FOR
RECOUPING AN OVERPAYMENT IN THE AFDC PROGRAM

REFERENCES: FEDERAL ACTION TRANSMITTALS 94-11 AND 94-20

The purpose of this letter is to transmit the enclosed proposed emergency regulations concerning the priority order to collect overpayments in the Aid to Families with Dependent Children (AFDC) program. The regulation changes are a result of the Administration for Children and Families, Action Transmittals (AT) 94-11 and 94-20. The regulations will be filed with the Office of Administrative Law in November and we anticipate they will become effective December 1, 1995.

The regulations will require the county to first seek recoupment from the caretaker relative recipient, even when he/she is no longer on aid. The county must continue recovery efforts with the caretaker relative recipient until any of the following circumstances exist:

1. The caretaker relative dies, and the county cannot collect the entire unpaid balance of the overpayment from the caretaker relative's estate;
2. The caretaker relative cannot be located;
3. The caretaker relative has the overpayment discharged in bankruptcy; or
4. The county is unable to execute a legal process to collect.

Collection from the other members of the assistance unit (AU) is not initiated until all efforts to collect from the caretaker relative recipient are exhausted. When the county is no longer able to collect from the caretaker relative, the county must collect the overpayment from the members of the overpaid AU until the amount of the overpayment is fully recovered, or the county determines that it is no longer cost effective to collect the remainder of the overpayment.

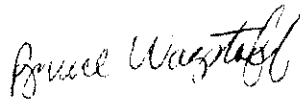
Under the new policy there is no priority order for recoupment of the overpayment from the other members of the AU. Collection can occur in sequence against one member at a time, or be collected concurrently from any of the members when in separate AUs or unaided.

The caretaker relative who was not a member of the AU when the overpayment occurred did not benefit from the overpayment and, therefore, is not responsible for the overpayment. In these cases, the county must collect from the other members of the overpaid AU.

Each county is responsible for developing procedures for locating former recipients. Some suggested ways to locate former recipients who have outstanding overpayments are referenced in the Code of Federal Regulations (CFR). These include using appropriate data sources such as State employment insurance files, State tax returns and automobile registration, or any other files that could be useful in locating former recipients [45 CFR 233.20(a) (13) (iv)].

If you have any questions regarding these regulations, please contact Ms. Joelyn Walters at (916) 654-1803 or CALNET 464-1803.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Wagstaff".

BRUCE WAGSTAFF
Acting Deputy Director
Welfare Programs Division

Enclosure

Amend Section 44-350.161(a), repeal Section 44-350.2(g), add new language to Section 44-350.2(l), and renumber existing language to Sections 44-350.2(m) and (n):

44-350 OVERPAYMENTS - GENERAL (Continued)

44-350

.1 (Continued)

.16 (Continued)

.161 The county shall not demand collection of nonfraudulent overpayments totaling less than \$35 from individuals no longer receiving aid. Where the nonfraudulent overpayment amounts owed by the individuals no longer receiving aid is \$35 or more, the county shall send a demand notice for repayment. No further collection efforts shall be made if the county determines that the cost to collect the overpayment exceeds the amount to be recovered.

(a) Counties shall maintain information regarding the uncollected overpayments to enable recoupment should ~~the~~ any individuals from the prior overpaid AU reapply.

(b) (Continued)

.2 (Continued)

(g) ~~INDIVIDUALLY RESPONSIBLE FOR THE OVERPAYMENT / ANY PERSONS IN THE HOME WHO:~~

(1) ~~HAD KNOWLEDGE OF A CHANGE IN INCOME/ RESOURCES/ FAMILY COMPOSITION OR OTHER CIRCUMSTANCES AFFECTING ELIGIBILITY OF GRANT APPLICANT; AND~~

(2) ~~WAS RESPONSIBLE FOR REPORTING SUCH CHANGES UNDER SECTION 40/ 103/11; AND~~

(3) ~~FAILED TO REPORT THE CHANGE IN CIRCUMSTANCES WHICH CAUSED THE OVERPAYMENT/ (Reserved) (Continued)~~

(1) Unlocatable - Means either of the following:

(1) When the county is unable to determine the physical whereabouts of the caretaker relative; or

(2) When the county is able to locate the caretaker relative, but unable to execute a legal process to collect.

(m) (Continued)

(n) (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 11056, Welfare and Institutions Code; and Administration for Children and Families (ACF) Action Transmittals (AT) 94-11 and 94-20.

Amend Sections 44-352.21 and .22; delete existing Section 44-352.3, and add new Section 44-352.3 to read:

44-352 OVERPAYMENT RECOUPMENT (Continued)

44-352

.2 (Continued)

.21 Collection of overpayments ~~owed by~~ shall not be demanded from any individual of the overpaid AU no longer receiving aid shall not be demanded when:

.211 The overpayments are nonfraudulent; and

.212 The total amount of the overpayments ~~is~~ is less than \$35.

.22 Where the nonfraudulent overpayments owed by any individual no longer receiving aid totals \$35 or more, the county shall send a demand notice for repayment. No further collection efforts shall be made ~~unless~~ if the county determines it is not cost effective to collect the overpayment (see MPP 44-350.74161(b)).

~~17~~ From Whom The Overpayment May Be Recouped

~~171~~ An overpayment may be recouped from one or more of the following/ unless specifically exempted under MPP 44-352.2/

~~1711~~ The assistance unit that has been overpaid if the individual responsible for the overpayment (see definitions) is living with the assistance unit/

~~1712~~ The individual responsible for the overpayment if he/she is no longer eligible for aid/ or

~~1713~~ Any assistance unit which now includes the individual responsible for the overpayment/

~~1714~~ When the individual responsible for the overpayment cannot be identified (such as in an administrative error overpayment), the overpayment shall be recouped from the overpaid assistance unit or from any individual who was a member of the overpaid assistance unit when the overpayment occurred/

.3 Priority Order For
Overpayment Recoupment

Overpayments shall be recouped in the following
priority order unless specifically exempted
under Section 44-352.2.

.31 Caretaker Relative
Recipient

When the caretaker relative was a member of
the AU at the time of the overpayment, the
county shall first seek recoupment from the
caretaker relative recipient.

- .311 Recovery The county shall continue to seek recovery of the overpayment from the caretaker relative even when he/she;
- (a) Moves to another AU, or
- (b) Is no longer on aid.
- .312 Members of the AU The county shall initiate recovery of the overpayment from the other members of the overpaid AU when the caretaker relative:
- (a) Dies and the county cannot collect the entire unpaid balance of the overpayment from the caretaker relative's estate; or
- (b) Is unlocatable; or
- (c) Has the overpayment discharged in bankruptcy; or
- (d) Is no longer on aid; the overpayment is less than \$35 pursuant to Section 44-352.211, and there are other members of the overpaid AU who remain on aid; or
- (e) Is no longer on aid, and the county has determined that it is not cost effective to collect the overpayment from the caretaker relative pursuant to Section 44-352.22.
- .32 Unaided Caretaker Relative When the caretaker relative was not a member of the AU at the time of the overpayment, the county shall seek recovery from the members of the overpaid AU as specified under Section 44-352.33.
- .33 Recovery from AU Members There shall be no priority order in seeking collection of the overpayment from members of the overpaid AU who were not the caretaker relative.
- .331 Sequential/Concurrent Collection may occur in sequence against any one member at a time or concurrently from any of the members, when in separate AUs or when not receiving aid.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10053, 10554, 11017, 11155, 11155.1, 11155.2, 11257, 11450, 111452, and 11453, Welfare and Institutions Code; 45 CFR 233.20(a)(3)(i)(B); Darces v. Woods (1984) 35 Cal3rd 871:201 CalRptr. 807; and the Federal Terms and Conditions for the California Work Pays Demonstration Project as approved by the United States Department of Health and Human Services on March 9, 1994; and Administration for Children and Families (ACF) Action Transmittals (AT) 94-11 and 94-20.